

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE MITCHELL, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 00-1537; Submitted on the Record;
Issued April 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that he failed to give written notice of injury within the time specified.

On June 12, 1998 appellant, then a 23-year-old casual clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on April 3, 1998 he sustained a slipped disc in his lower back while squatting down to pick up a parcel box. Appellant stated that he felt a pinching and then heard a pop.

By decision dated July 28, 1998, the Office denied appellant's claim as it determined that the evidence of record failed to support that he developed a medical condition causally related to the accepted employment incident. By letter dated August 3, 1998, appellant requested a hearing, which was held on February 3, 1999. In a decision dated May 1, 1999, the hearing representative reversed the Office's July 28, 1998 decision, and accepted that appellant had sustained a lumbar strain in the performance of duty.

By letter decision dated May 18, 1999, the Office informed appellant that his claim had been accepted for lumbar strain. However, in another letter of the same date, the Office informed appellant that his claim for continuation of pay was denied due to the fact that he had not filed his claim within the required 30 days.

By letter dated June 10, 1999, appellant requested a hearing, which was held on November 19, 1999. In a decision dated February 4, 2000, the hearing representative affirmed the denial of continuation of pay, as appellant had failed to supply timely written notice of injury.

The Board finds that the Office properly denied appellant's claim for continuation of pay on the grounds that he failed to give written notice of his injury within the time specified in the Federal Employees' Compensation Act.

Section 8118(a) of the Act¹ provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2).² The context of section 8122 makes clear that this means within 30 days of the date of injury.³

Appellant contends on appeal that he notified his supervisor the day of the accident and was not aware that there were other procedures that needed to be met. The Board has held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provision for filing a claim for compensation because of exceptional circumstances is not applicable to section 8118(a) which sets forth the filing requirements for continuation of pay. The rationale for this finding is set forth fully in the Board’s decision in *William E. Ostertag*.⁴ There is, therefore, no provision under the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury.⁵ Accordingly, appellant’s assertion that his supervisor was aware of the injury and that he was not aware of the proper procedures for filing a claim is without merit.

The decisions of the Office of Workers’ Compensation Programs dated February 4, 2000 and May 18, 1999 are affirmed.

Dated, Washington, DC
April 5, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ 5 U.S.C. § 8118.

² 5 U.S.C. § 8122(a)(2).

³ *Robert E. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁴ 33 ECAB 1925 (1982).

⁵ *Dodge Osborne*, 44 ECAB 849, 855 (1993).